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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BERNABE PEREGRINO,

Defendant and Appellant.

F044157

(Super. Ct. No. 38071)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Lloyd G. Carter and Kelly C. Fincher, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Buckley, Acting P.J., Levy, J., and Cornell, J.

On August 30, 1996, appellant was convicted by plea of selling or transporting marijuana (Health & Saf. Code, § 11360, subd. (a)). On August 26, 2003, the court denied appellant's motion pursuant to Penal Code section 1016.5<sup>1</sup> to vacate his conviction. On appeal, Peregrino contends the court abused its discretion when it denied his motion to vacate his conviction. We will affirm.

### **FACTS**

On July 29, 1996, Peregrino and seven other men were arrested in Lindsay for their involvement in a scheme to sell undercover officers 30 pounds of marijuana.

On August 30, 1996, Peregrino and five codefendants pled no contest to selling or transporting marijuana (Health & Saf. Code, § 11360, subd. (a)). During the change of plea proceedings the court directed itself to all the defendants and stated:

“For all of you let me inform you that if you are not a citizen of the United States, conviction of these offenses or this offense could have the result of your being denied the right to become a citizen, deported or denied the right to enter the United States again.”

When one of the Peregrino's codefendant's indicated that he did not understand the immigration consequences of his plea, the court reiterated,

“If you are not a citizen, conviction of this offense might have the consequence of your being deported or denied the right to enter the United states or denied the right to become a citizen. . . .”

Later in the proceedings, the following exchange occurred when the court directed itself to Peregrino:

“THE COURT: Within the last 24 hours have you taken any drugs or narcotics?

“[PEREGRINO]: What?

“THE COURT: Within the last 24 hours have you taken any type of drugs or narcotics?

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<sup>1</sup> All further statutory references are to the Penal Code.

“[PEREGRINO]: No, never. Well they are giving me medication because I am ill, because I am ill. I am on disability *and if they send me to Mexico what am I gonna do?*

“THE COURT: What was the medication that you took?

“[PEREGRINO]: Pills for the pain.

“THE COURT: Do you know what the name of it is?

“[PEREGRINO]: I don’t know. They just give it to me over there. You can ask over there.

“THE COURT: Is it medicine that was prescribed for you?

“[PEREGRINO]: Yes, the doctor.

“THE COURT: Does it affect your ability to understand what’s happening here in court?

“[PEREGRINO]: It does affect me, yes.

“THE COURT: So do you have trouble understanding everything that I was saying?

“[PEREGRINO]: I feel my eyes are big. It makes me ill.

“THE COURT: *So are you having trouble understanding everything that I am saying?*

“[PEREGRINO]: *No, no, I do understand.*

Subsequently, the court repeated the admonition regarding immigration consequences a third time for the benefit of one of Peregrino’s codefendants. At no time did Peregrino or any of his codefendants complain about the manner in which the proceedings were interpreted to them.

On August 30, 1996, appellant and five of his codefendants were placed on probation for five years on condition that they serve one year local time.

On August 13, 2003, Peregrino filed a motion pursuant to section 1016.5 to vacate his conviction. Peregrino submitted two declarations in support of the motion. In the first declaration, Peregrino alleged that he was not advised of the potential plea bargain

until the day he entered a plea and that the interpreter told him his plea would not result in the cancellation of his work permit or termination of his disability benefits. He also alleged that at the time he entered his plea he did not understand that he was subjecting himself to being deported, not being able to return, and never being able to become a citizen of the United States. In early 2001, Peregrino consulted an attorney who advised him that his 1996 conviction had these consequences and that the attorney could help him become a permanent resident, and ultimately a citizen, only if Peregrino had the conviction removed from his record. Three months later, after raising sufficient funds, Peregrino hired an attorney to assist him in vacating his 1996 conviction. Peregrino further alleged that he would not have entered a plea in 1996 if he had understood the immigration consequences of doing so.

In his supplemental declaration, Peregrino alleged that only one interpreter assisted him and his codefendants when they entered a plea in 1996 and that he did not understand some parts of what the judge said. Also, while the case was being discussed, Peregrino asked the interpreter to explain part of what was being said but the interpreter ignored him and continued interpreting. Peregrino was unfamiliar with court proceedings because he had never been a defendant in a criminal case. This resulted in him not speaking up and telling the judge that he was having problems with the interpreter because he thought he would get in trouble.

On August 26, 2003, the court heard Peregrino's motion. Toward the end of defense counsel's argument the following colloquy occurred:

“THE COURT: Well, excuse me. To me, the issue is was he advised. It's very straightforward.

“MR. LITMAN [DEFENSE COUNSEL]: Okay. I would submit that what occurred at the – at the beginning wasn't sufficient. If the judge had asked Mr. Peregrino if he heard what the judge said and if . . . he understood it, then I would say it would be sufficient, but that didn't happen here, unlike --

“THE COURT: So when the court says to your client on page -- looks like 7, ‘Have you -- have you been able to understand every --’excuse me. Line 9, ‘So --’ there was some colloquy about Mr. Peregrino taking medication. He talks about his eyes, and the court says, ‘So are you having trouble understanding everything that I am saying? No, no, I do understand.’

“And just -- just a little bit earlier, the court says, ‘For all of you, let me inform you that if you are not a citizen of the United States, conviction of these offenses or this offense could have the result of your being denied the right to be a citizen, deported or denied the right to enter the United States.’

“So you’re saying that’s not enough?

“MR. LITMAN: I would submit, your Honor, that under the -- under the facts here and the record that’s before the court that what -- I’m sorry, what page were you referring to?

“THE COURT: It looks like 7. It’s not really a good copy, but --

“MR. LITMAN: Right.

“THE COURT: I mean insofar as where the pages are.

“MR. LITMAN: I’m sorry.

“THE COURT: The text is clear. Page 7, line 9, 9 through 12. That’s about his understanding of what the court is saying, and, of course, on page 3, we have the pronouncement by the court, an advisement by the court for all of you, and that’s after the court has called this specific case.

“MR. LITMAN: Correct. Your Honor, I think --

“THE COURT: Is there anything new, Mr. Litman, that you haven’t addressed in your pleadings?

“MR. LITMAN: No, other than the fact you have the information about my client; the fact he has no other record; you know he successfully completed probation, and I would submit it on those arguments, your Honor.

“THE COURT: All right. I’m adopting my tentative decision. The motion is denied.”

## DISCUSSION

Peregrino contends that in ruling on his motion to vacate, the court should have determined not only whether the required admonition under section 1016.5 was given, but also whether Peregrino understood the admonition. Thus, according to Peregrino, the court abused its discretion when it denied his motion because in so doing, the court found as a matter of law that the only relevant consideration was whether the required section 1016.5 admonition was given. Peregrino further contends that the following circumstances raise a reasonable possibility that he did not understand the section 1016.5 admonition: 1) the court did not personally give the required admonition to him; 2) the interpreter who interpreted for Peregrino and five other codefendants was not sworn; 3) the record does not indicate whether the interpreter was qualified to interpret for one, let alone a group of six defendants and the court simultaneously; 4) Peregrino at one point told the court that he was taking medicine and did not understand; and 5) at least one other codefendant told the court that he did not understand the section 1016.5 admonition. We will find that the court did not abuse its discretion when it denied Peregrino's motion to vacate his 1996 conviction.

Section 1016.5 provides that “[p]rior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” (§ 1016.5, subd. (a).)

The statute also specifies a remedy for a trial court's failure to administer the mandated advisements. “If, after January 1, 1978, the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the

defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty." (§ 1016.5, subd. (b).)

"In . . . section 1016.5, the Legislature explicitly acknowledged the motion to vacate the judgment as the appropriate vehicle to clear the way for a postjudgment withdrawal of a guilty or nolo contendere plea entered without advisement of the possible immigration consequences." (*People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617.) To prevail on a postjudgment motion to vacate a judgment based on the trial court's failure to comply with section 1016.5 in accepting the plea, the defendant must show, in addition to the court's failure to give the section 1016.5 advisements, the following: (1) as a result of the plea there is " 'more than just a remote possibility of deportation, exclusion, or denial of naturalization' " (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 203); (2) at the time of the plea the defendant was ignorant of the possible immigration consequences of the plea (*People v. Castaneda, supra*, 37 Cal. App.4th at p. 1619); (3) had he been aware of those consequences, he would not have entered the plea (*People v. Superior Court (Zamudio), supra*, 23 Cal.4th at pp. 199-200); and (4) he made his motion to vacate the plea with "reasonable diligence" (*People v. Castaneda, supra*, 37 Cal.App.4th at p. 1619).

Here, it is clear that when the court stated that, in its view, the issue was whether Peregrino was advised of the immigration consequences of his plea, the court meant only that a ruling adverse to Peregrino on this issue would obviate the need to consider other issues his motion raised. It is also clear from the ensuing colloquy between the court and defense counsel that the court considered whether Peregrino understood the immigration consequences of his plea and implicitly found that he did. Accordingly, we reject Peregrino's contention that the court comments indicate that it applied the wrong standard in ruling on his motion to vacate his 1996 conviction.

Additionally, at the 1996 change of plea hearing, the court explained the immigration consequences on the record three times to the group of six defendants. Further, at one point in his exchange with the court Peregrino acknowledged that he understood “everything” the court was saying while at another point he manifested his understanding of the immigration consequences of his plea when he asked the court what he was going to do if he was sent to Mexico. Thus the record contains substantial evidence which supports the court’s finding at the motion to vacate hearing that in 1996 the trial court gave the section 1016.5 admonitions and its implicit finding that Peregrino understood them. Moreover, given the unequivocal evidence that Peregrino understood these admonitions, the circumstances Peregrino cites to contend that he did not, are of no import. The court did not abuse its discretion when it denied Peregrino’s motion to vacate his 1996 conviction.

#### **DISPOSITION**

The judgment is affirmed.